Previous references

1913-14
(Municipal)

File No 118-13
Serial Nos 1-4

Later references
Ref 185-15 Sls 1, 2-15 Feb 18

Previous

GENERAL AND REVENUE SECRETARIAT

Serial Nos 1-4

Part B for May 1914

SUBJECT

The legality of the Talwar cess in the Hanihar municipality

Sl 1 To V R Thyagaraja Iyer Esqre and Dy Comm Bhimaldurg Dist. Do no rec'd 25/8/13 states that it has come to the notice of the Govt that a cess called "Talwar cess" is levied in the Hanihar municipality and requests him to report very early when the cess was introduced, the object of its levy, the authority sanctioning it and the head of account to which it is credited.

Sl 2 from Do Do. dio no 1249/13 states that the "Talwar

GPB—1000—1711

"Jodi" is being collected by the Patels of Mahim town since 1897-98 from the payers of Mahalaxmi town to the mully, that prior to this year, the Dalwais themselves were getting remission from the Mahalaxmi payers, that the Patels themselves used to distribute the amount of the Jodi collected among the Dalwais (4 in number) that in 1911-12 the Sub Divl Officer President of the mully ordered that the collections of Jodi should be credited in the cash book of the Sub Dalwai office and payments made to the Vice President himself, vide his order no SS 29-36 dt 52-97 dt 20/10/00 authorising refund of Jodi from Mahalaxmi payers in municipalities in which the practice prevails, that the Dalwais to whom the Jodi is paid assist the Patels and Shanbhogue in the collection of municipal taxes, that the Mahim and Council resolved at their meeting held on 30.12.12 to discontinue the levy of the Jodi and Mahim was handed over to the Sub Divl Officer, Dharavi, that the services of the Dalwais in Mahim town cannot be dispensed with and that they must be paid the annual rates according to the order of the Collector referred to

sd/- to the Dy. Com. of the Cent. Divn no 1094 dt 11/5/14. States that the collection of the 'Jodi' referred to in GP no SS 29.36 dt 52-97 dt 20/10/00 as a cess by the village servants is irregular, and that this practice should be discontinued

GRS 11] 1913.

GENERAL AND REVENUE SECRETARIAT.

(Judicial)

NOTES

File No 138/13

FILE HEADING.

'Talavar Case' in the Stanthar Municipality

From

No	Dated	Received

Diary No	Enclos	Spare Copies	Serial No

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS

NOTES—First Sheet

GPB—85,000—15-6 12

Jud Br No 138 of 1913-14 2

D/1228 N O T E.

...

1 During my recent visit to Harihar, it was brought to my notice that a cess known as 'Talavar Cess' was levied in this Municipality.

2 There does not appear to be any authority for the cess. It does not appear to be covered by the Regulations

3 The Secretary will kindly look into this matter and favour me with a note suggesting the further action to be taken

4 If the levy is unauthorized, orders should issue at once putting a stop to the collection.

19/8/13

5 Please put up draft D a Do to be drawn for a report as directed

19/8/13

6 Draft D.O. is submitted

20/8/13

7

20/8.

8

9

R S 12]

General and Revenue Secretariat

File No. 138 of 1913

Serial No	
1	To V R Thyagaraja Iyer Esq in A, Dy Coll, Tirutaloorpe Dist. D.O. No 2209 dy 25.6.13 States that it has come to the notice of the Dewan that a Cess called 'Talvar Cess' is levied in the Harihar Municipality, and requests him to report very early when the Cess was introduced, the object of its levy, the authority sanctioning it, and the head of account to which it is credited
2	From V R Thyagaraja Iyer Esq in A D.O. No 1129 12.9.13 States that the 'Talvar Cess' is being collected by the Patels of Harihar Town since 1897-98, from the payers of Mohatarfa taxes to the Municipality, that prior to that year the Talvars themselves were getting the Mamuli from the Mohatarfa payers, that the Patels themselves used to distribute the amount of the Cess collected among the Talvars (4 in number) that in 1911-12 the Sub Divisional Officer President of the Municipality ordered that the collections of Mamuli should be credited in the Cash Book of the Sub Taluk Office and payments made to the Vice-President himself, that the Govt order No 3329-36 R.Z. 5297 dy 20.10.1900 authorizes the levy of Mamuli from Mohatarfa payers in Municipalities in which the practice

NOTE—Contin sheet.

GPE—65 000—17-6-12.

17-1

4

] R S 12]

General and Revenue Secretariat

Jud File No. 138 of 1913

Serial No

practice prevails, that the Talvars to whom the Mirasa is paid assist the Patels and Shanbhogue in the collection of the Municipal taxes, that the Standing Committee resolved at the Meeting held on 30.12.1912 to discontinue the levy of the Mirasa & that it was pointed out to the Sub-Div Offr, Dharwar, that the services of the Talvars for Municipal purposes should be paid for from Municipal funds & not dispensed with, according to the order of the 20.10.1910 above referred to.

10 Submitted with reference to para 5 supra.

AMK 70
16.9.1913

11 The action appears satisfactory.

Dr Lee
17/9

12 If Haveri is a Regulation Municipality, how is the cess authorized?

Dr Lee
17/9

13. Please refer previous records.

Dr Lee
18/9

Mr Bruning that the levy was authorized by custom prior to the Municipal Reg, can it be legalized under sec 57, xi? Should not such customary rights be expressly provided for in the Regulation itself? on these two points the Govt Advocate may be consulted viz Tax as defined in Sec 3, cl 13 of the Municipal Reg

Dr Lee
30/9

15 Recommended unofficially to the Govt Advocate for favour of opinion.

By order
Assistant Secretary
Dr Lee 4

30/9/13

Noted 30.9.13

NOTE—Contin sheet.

GPB—65,000—17-6-12.

R. S. 12]

General and Revenue Secretariat

Mil File No. 138 of 1913

Serial No.

H.O-249-13-16 The points involved in this reference are somewhat important & intricate & I took some time to consider them - The order of Govt dated 20 10 1900 containing instructions regarding the payment of Miras to Talwars by Mohatarfa payers in Municipal Towns was passed long prior to the passing of the Mysore Municipal Regulation VII of 1906 I understand that the town of Harihar has been declared by Govt vide No. to be a Regulation Municipality. Before it was constituted as such it was a non-regulation Municipality governed by Executive orders one of such orders viz G.O no 3329-36 R.T dated 20 10 1900 sanctioned the continuance of the payment of Miras by the Mohatarfa Tax payers to Talwars already in service in Municipal Towns. The Talwar Cess thus payable is therefore an imposition by Govt, levied & handed over by Govt to the Municipality.

NOTE—Contra sheet.

GPB—65,000—12-8-

R S. 12]

General and Revenue Secretariat

Ml File No. 138 of 1913

Serial No

The Municipal Regulation VII of 1906 repeals only the Bangalore Municipal Regulation of 1871 & the Regs amending it subject to the saving clause in Sec 2. Any tax levied by Govt within any Municipality to which the repealed Regulation was not applicable cannot be said to be expressly or impliedly repealed by the New Municipal Regulation by new Munc. - ipality constituted under the new Regulation cannot of its own authority impose any tax not contemplated by Sec 59 thereof But there appears to be no prohibition to Govt imposing & levying any tax not coming within the four corners of Sec 59 If the Talwar Cess in question, the imposition of which is authorised by Govt is levied by Govt & handed over to the Municipality the fact that Sec 59 of the Municipal Regn does not cover such tax

NOTE—Contr sheet

GPE—6/,000—17-4-13.

R. S. 12]

General and Revenue Secretariat

Ml File No. 138 of 1913

Serial No

will not in my opinion be an impediment because the tax as I have said, is not one imposed by the Municipality. In the view I take of it it becomes unnecessary to consider whether it can be legalised under Sec 59 cl xi.

17 § 59 cl xi refers to taxes other than those enumerated in the preceding 10 clauses intended to be selected by the Municipality itself for imposition. If however, the Talwar Cess is deemed to be an impost by the Municipality levied by it as a Municipal tax then to ensure legality of future levy the previous approval of Govt. & the other formalities prescribed by the Municipal Reg" shall have to be adopted

18 Custom or usage will of course prevail over the provisions of the Act, provided the Custom is not inconsistent

NOTE—Contin sheet.

GPE—6(000—17 6-12.

R S 12]

General and Revenue Secretariat | Ml File No. 138 of 1913

Serial No	
	with them or is not Expressly
	or impliedly modified or abolished
	by any other section of this
	act.

26 11-13

Boraiswami for Rao

NOTE—Contin sheet

GPD—61 000—17-6-12.

G. R. S. 12]

General and Revenue Secretariat

Ind File No 138 of 1913.

Serial No	
	19 Submitted with the Hon Opinion of the Govt Advocate for his reference in para 14 supra HWK-70 29 II 1913
	20 Dy Sec'y). Please refer Govt to Br III for Opinion Dy 3/12. Draft 5/12
	21 Part III) Dy 5/12

Issue 1-5-13

Issue 5/12

NOTE—Contn sheet.

C P S 60 000—7 11 13

J Mus 213

(R. S 12]

General and Revenue Secretariat.

Mil File No. 138 of 1913-14

Serial No

22 Subd.. The talawar cess was a cess imposed by Govt in non-regulation municipal areas for meeting the cost of employment of minor village servants to help in the work of collection of revenue &c and of preserving peace The Municipal Regn contains provisions enabling the council to levy certain taxes to meet the cost of administration of the municipality and these taxes are expected to be sufficient in the usual course to meet all the cost of such administration On this score the entertainment of talawars to do the work of municipal servants and taxing the people separately to meet this cost is not contemplated by the Regulation Section 59 (xi) authorises the imposition of any other tax to the nature and object of which the approval of Government shall have been obtained prior to the selection contemplated in sub-clause (i) of clause (a) of sec 60

Note—Contn. sheet

GPB—65 000—17-6 12.

Jmis 175-13

11

R S 12]

General and Revenue Secretariat | Mul File No. 13 of 1913-16

Serial No

Y

2-3 The Govt order No 3329-36—R 7. 52-97 dated 20/10/1913 authorising the levy of ~~mun~~ from Mohalla fayers cannot ~~cannot be~~ construed as the approval of Govt as it was one of the several executive orders passed by Govt for the administration of Municipalities constituted otherwise than under the old Municipal Regulations then in force and as such called non regulation Municipalities If taking all the ~~the~~ sources of income of the Harchar Municipality into consideration Government think that it is desirable and necessary to authorise an additional imposition of this kind of cess (which only obtains in non-~~regulation~~ municipal areas and in only a few of the non-regulation municipal areas) sanction may be accorded to the municipal council to proceed to take act in the matter under sec 60

(68)
8/1/14

NOTE—Contn sheet.

GPE—68 000—17-6 12.

General and Revenue Secretariat

Mal File No. 138 of 1913

Serial No

24. The main question for consideration is whether the levy of the 'Talawara Cess' is legal & is covered by the provisions of the Mal Regulation. There can but be one answer to this question viz that it is not authorised by the Mal Regn under which Hanhar has been constituted into a municipality. The Executive order authorising the levy cannot make this levy legal after the Mal Hanhar became a Regd municipality. So far it is common ground

25. but there appears to be some difference of opinion regarding the further action to be taken. Being unauthorised, the cess should either by be abolished or action taken to legalise it under Sec 59 of the Mal Regulation. The Govt advocate seems to be of opinion that this latter step is not necessary, as the cess may be deemed to be one imposed by Govt & handed over to the municipality by Govt. He thinks that there is no prohibition against Govt doing so. Apart from the purely legal point whether Govt have such power in local area designated by Statute to local bodies for levy

NOTE Contn sheet

From 175-13 15

G. R. S 12]

General and Revenue Secretariat | M File No. 138 of 1913 1759

Serial No

purposes, there is the circumstance against the view Govt Advocate, view viz, it is not desirable that within the same local area there should be two agencies for purpose of taxation It stands to reason that Govt, having granted delegated the powers of local taxation to local bodies, should not step in again & impose taxes simultaneously with the local bodies The Govt Advocate also states that custom & usage can prevail over the provisions of the Act However true this may be with respect to general Civil law, I think it has no place in matters of provisions relating to taxations which being against the subject, must be construed strictly It appears therefore that, if it is intended to keep this Cess, it should be for which the legislature under the provisions of Sec 55 of the Mun Regn or abolished

Secretary)

26 Submitted with reference to para 20 supra

HK 30 27 Sec 2/

7 2 1914

GIP—65 000—1 6 13.

NOTE—Contn sheet.

G R 5 12]

General and Revenue Secretariat | Ind File No. 138 of 1913.

Serial No

28 The Govt of Bengal in their letter No. 1500 dated 15th August 1913 have submitted the Judgment of the Calcutta High Court in the case of Emperor vs. Nagendra Nath Gupta and others, recently decided by the Hon'ble Mr. Justice Carnduff and Mr. Justice Chaudhuri, and have requested that the opinion of the Advocate General may be obtained as to whether the Judgment of the High Court is correct in law and whether any appeal should be preferred against it. The Advocate General's opinion is attached to the letter.

29 I think that the Judgment of the Hon'ble Judges of the High Court is correct in law and that no appeal should be preferred against it.

28/8

30 Draft as per Mr. Chaudhuri's opinion in favour of first case

31 Done

NOTE—Contn sheet.

CFB—40 000—7 11 13

G R S 12]
General and Revenue Secretariat.

Mil File No 138 of 1913

Serial No	
	32 A typed copy of the draft letter is submitted HWK 70 14 4 1914 BSS 33 Secy Rm 14/4 -
	34 Dewan - I suggest 2nd number L 15/4 Rm 15/4
9082 18 4 1914	35 Ofc agrees by 2d mr ma L Rm 19/4 36 Draft approved by the Dewan 25 4 14 37 Secy Dewan 25/4 Rm 25/4
3	To the Dy Comr of the Chitaldroog Dist. No 10942 of 1 5 1914 States that the collection of the "Mamul" referred to in G O No 3329 36 R R 52-97 of 20-10-1900 as a Cess by the Village Servants is irregular and that the practice should be discontinued
4	To the Dy Comr, Chitaldroog Dist No 4482/14-5 Dpt Submits a copy of the memo of instructions issued

Note—Contn sheet

BFG—55,MM—27-4-09

G. R. S. 12]

General and Revenue Secretariat

Ml File No. 138 of 1913.

6701

49

Serial No	
	caused to the Sub Div Officer Dasr stating that the Patel & Chaubdar did not collect the rate known as "Talavarcess" & Distributed to talavars, etc.
	38 Submitted for information
	HK 20/5/1914
	BAS 39 Dy Sec 4/
	Asst 21/5
	Seen Asst 21/5
	P 22/5

NOTE—Contin sheet

GPB—60 000—7 11 13

GRS 13]

Routine Notes

[To be used only for notes, requisitions, etc , not intended for permanent record]

D 1752, Vol 7, 138-13

1- Harchar is a Regr Imm ty.

2 - The levy of 'Talwar Cess' in the Harchar mahl has to be legalised under Sec 59 (XI) of the Mysore Imml Regn

H.M. 70

18 9 1913

It may probably be added that the Imml Regn has not prohibited the levy of the Cess, which rests on the prescriptive right of the particular class of village servants the levy in ~~the Sirsi ty~~ Harchar is analogous to the levy of 'aya' in villages ~~&c~~ the 'Talwar Cess'

N B —Should routine notes be written on small slips he notes must be copied or slips pasted on his form

GPB—20 000—14 7 13

18

G R S 13]

Routine Notes

[To be used only for notes, requisitions, etc , not intended for permanent record]

may not be recoverable ~~under the provisions~~ in the manner prescribed in the Amd Regn, in case of default, but it is not easy to see how a Regn can be taken to ~~cap~~ annul & Cancel an existing right, when it does not expressly enact to that effect

G Notfn No 1677 - R 540 of 10 Aug 1897 prescribes the mode of recovering the tax, and it is quite independent of the Amd Regn

Am
18/9

D/ Lec'n)

N B —Should routine notes be written on small slips the notes must be copied or slips pasted on this form

(PB—20 000- 14 / 13

Calls for a report re the levy of 'Talavar Cess' in Kanchee

135

G R S 26]

File No 13

Serial No 1

Diary No of letter replied to 1228

No 2209
ml 138-13-

9 25 8 13

General and Revenue Secretariat
(Mund)
, the 191

To

Date of issue 25 8 13.

Signed by Mr DM Narasinga Rao

My dear Sir

During the Dewan's recent visit to Kanchee, it was brought to his notice that a Cess known as 'Talavar Cess' was levied in that Municipality. I am to request you to kindly submit very early a report for the information of Govt when the Cess was introduced, the object of its levy and the authority under which I am showing it, and the present head of account to which it is credited.

I am
Yours Obediently

over

SUBMITTED
20 8 1913

To
V R Thyagaraya Iyer Esq BA
(Dy Coll, Chittaldroog Dist)

Copy 23/8/13

DO No 11 Enclosure

Mul/138-13/d2 D1757

Chitaldrug

12th September 1913.

My dear sir,

With reference to your D O letter No 2209/M1 138-13/dated the 25th August last, re the particulars of the " Talwar Cess " collected in Harihar municipality, I have to report that Government order No 3329-36/ R.F 52-97 dated 20th October 1900 authorizes the levy of mirasi from mohatarfa payers in municipalities in which the practice prevails.

2. As there were four Talwars employed in Harihar municipality prior to the date of the Government order referred to above, their services were continued and they are being paid mirasi at the rate of one anna per rupee collected from mohatarfa payers It is not however known in what year and under what authority the system was originally introduced From the statements of the patel and shanbhog of Kasba Harihar who are entrusted with the work of collecting mohatarfa taxes of the municipality and also from the accounts maintained by them in that connection, it is found that they have been collecting the rate since 1897-98 and themselves distributing the collections

among the Talwars Prior to that year the Talwars themselves are reported to have been getting the mirasi from the mohatarfa payers

3. In the year 1911-12 one of the Councillors of the municipality having brought to the notice of the Deputy Commissioner that the levy of mirasi was unauthorized and that no accounts were kept of the collections, the matter was referred for disposal to the Davangere Assistant Commissioner who presides over Harihar Municipal Council. Enquiry having been instituted by him, it was ordered by the President of the Council that the levy in question might continue but that the collections of miras should be credited in the Cash Book of the Sub Taluk Office and payments made to the servants by the Vice President Himself

4. When the above order of the President was communicated to the Council they did not agree to act up to it and passed a resolution to the effect that the levy of one anna cess should discontinue and thereby desired to dispense with the services of these Talwars who have been employed in the municipal town from a long time in

Copied by

Examined by

GPB—25,000—8-8-11

order to assist the patel and shanbhog in collecting mohatarfa taxes

5. The entire connected papers on the subject were submitted to this office and my predecessor Mr K. Krishna Iyer passed orders in March 1913 to the effect that the municipal council's proposal could not be given effect to in as much as the Government order referred to above clearly lays down that if there are such servants <u>already</u> employed (that is prior to the date of the order) their services could not be dispensed with and that they must be paid the <u>mamul</u> rates

The above facts are submitted for the information of Government as called for. The Vernacular records are also herewith submitted for reference

Yours sincerely,

S.V.

To

D M. Narasinga Row Esquire B A , B.L.,
Deputy Secretary to Government,
General and Revenue Departments,
<u>B a n g a l o r e.</u>

D No related to 17514

27/4

To, No 10942 Mil Rule 138/13

SC No 3

The Deputy Commissioner,
Chitaldrug District.

9/5/14

Sir,

With reference to correspondence ending with your letter No. 11 dated 12th September 1913 about the collection of "Talavar Cess" in the Harihar Municipality, I am directed to observe that as the dues in question are merely the miras payable by the mohatarfa payers in Municipalities as per mamul (Vide G.O.No. 3329-36- R.F.52-97 dated 20th October 1900)they canbe recoverdd only on complaint to the Amildar or Deputy Amildar by the party aggrieved and in the manner prescribed in Government Order No. 1668-76/R.539 dated 10th August 1897

I am therefore to state that the collection of the said miras as a cess by the village servants is irregular, and that Government desires that this practice sho' be immediately discontinued.

A report of action taken by you in pursuance of these instructions may be submitted for the information of Government.

I have etc.,

Secretary to Government.

M.L.

1914

From:
The Deputy Commissioner
Chittagong Division

To
The Secretary to the Govt of B & O
The Manager of Mr Spence
Govt Estate Department
Bangalore

Dated
Despatched 15th May 1914
Received
General No 448
No

Enclosure No one

Submitting a copy of the terms of instructions issued to the Chittagong Forest Officer, Darjeeling, as per Secretary's letter No 10942 dated 1-5-14 (Re-call No 138-13-3) in connection of "Jalpai Seed" in the Kurseong Municipality.

GPE—50,000—5-1 13

Office of the Deputy Commissioner,
Chitaldrug District.

D 6707

Dated Chitaldrug 14th/15th May 1914.

From,

V.R. Thyagaraja Iyer Esquire M.A.,
Deputy Commissioner,
C h i t a l d r u g.

To,

D.M. Narasinga Rao Esquire B.A.,B.L.,
Offg. Secretary to the Government of
His Highness the Maharaja of Mysore,
Genl and Rev. Departments.
B A N G A L O R E.

Sir,

With reference to correspondence ending with your letter No.11270/Ml. dated 9th May 1914, re the collection of " Talwar cess " in the Harihar Municipality, I have the honor to submit herewith a copy of the memo of instructions issued in the matter to the Sub-Division Officer Davangere, in accordance with the concluding para of your letter No. 10942/Ml.138-13-3 dated 1st May 1914

I have the honor to be,
S i r,
Your most obedient servant,

Deputy Commissioner,
Chitaldrug District.

N.S.

Cur G rul 138-13/24

The following instructions are issued under orders from Government.

1. The Patel and Shanbhog of Harihar Town will not in future collect the rate known as " Talwar cess " and will not distribute it to the Talwars.

2. The above order in para (1) does not interfere with the payment of miras according to custom by mohatarfa payers to Talwars direct in Municipalities under Government Proceedings No.3329-36/R.F.52-97 dated 20-10-1900 and No.1668-76/R.539 dated 10-8-1897.

3. In case of non-payment the procedure indicated in Governemnt Proceedings No.1668-76/R.539 dated 10-10-1897 should be followed.

The Sub-Division Officer is requested to give immediate effect to the above order.

(sd) V.R. Thyagaraja Iyer,
Deputy Commissioner.

C h i t a l d r u g,
14th May 1914.

"C O P Y"

Deputy Commissioner,
Chitaldrug District.

SR 4 From the Dy-Com Chief Distr no 448 D 14/5/14

Submits copy of the memo of instructions issued to the Sub Divn officer, Davangere stating that the Patel and Shanbhogue should not collect the rate known as 'Salvan cess' and distribute it to Talwars etc

Manager
7/7/14